



IGNACIO TOWN BOARD MEETING
WEDNESDAY, April 15, 2015 - 7:00 PM
570 Goddard—Ignacio Town Hall

- I. CALL REGULAR MEETING TO ORDER: PLEDGE OF ALLEGIANCE AND ROLL CALL**
- II. PROCLAMATION: EARTH DAY PROCLAMATION APRIL 22, 2015**
- III. PUBLIC COMMENTS:** The Town Board values public comment and expects speakers to be courteous showing how one can respectfully disagree with others' views. Comments will address only the Board and may be limited to 5 minutes per person. Please do not comment on items listed on the Agenda as opportunity will be given to comment during these discussions.
- IV. APPROVAL OF MINUTES: March 18, 2015 and April 1, 2015**
- V. UNFINISHED BUSINESS:**
 - A. Executive Session under C.R.S. Section 24-6-402(4)(f) to discuss a Personnel Matter: Town Manager Evaluation**
 - B. Action on Town Manager Evaluation**
 - C. Email Rules Summary from Town Attorney**
 - D. Payroll Cost Savings Work Session Date**
 - E. Mediation Update**
- VI. NEW BUSINESS**
 - A. Four Corners Motorcycle Rally – Johnny Valdez**
 - B. WCA: Translt Waste LLC CPI 1.32% Price Increase (From \$11.25 to 11.40 for single cart; \$17.25 to 17.50 for second cart; and from \$23.25 to 23.60 for third cart)**
 - C. Ordinance #320 – Amend Municipal Code, Chapter 3, Land Use: Downtown Design Guidelines**
 - D. Board Meeting Dates and Time (Earlier) Discussion**
 - E. DOLA Planning Grant Research (\$75k w/\$25K match between 4 municipalities)**
 - F. Schedule Town Attorney Review (Annual Review per Contract Date May 13, 2014)**



**IGNACIO TOWN BOARD MEETING
WEDNESDAY, APRIL 15, 2015 – 7:00 P.M.
570 GODDARD AVENUE – IGNACIO TOWN HALL**

VII. STAFF REPORTS

- A. Police Department**
- B. Public Works**
- C. Treasurer**
- D. Planning**
- F. Town Manager**
- G. Attorney**

VIII. TRUSTEE REPORTS

IX. ADJOURNMENT



EARTH DAY NETWORK 2015

Earth Day Proclamation

April 22, 2015

WHEREAS the global community now faces extraordinary challenges, such as global health issues, food and water shortages, and economic struggles; and

WHEREAS all people, regardless of race, gender, income, or geography, have a moral right to a healthy, sustainable environment with economic growth; and

WHEREAS it is understood that the citizens of the global community must step forward and take action to create a green economy to combat the aforementioned global challenges; and

WHEREAS a green economy can be achieved on the individual level through educational efforts, public policy, and consumer activism campaigns; and

WHEREAS it is necessary to broaden and diversify this global movement to achieve maximum success; and

WHEREAS Earth Day is the beginning of a new year for environmental stewardship commitments, to implement sustainability efforts and commit to an Earth Day resolution(s); and

FURTHERMORE, let it be known that the Town of Ignacio, hereby encourages its residents, businesses and institutions to use **EARTH DAY** to celebrate the Earth and commit to building a sustainable and green economy;

NOW THEREFORE LET IT BE RESOLVED, that I, Mayor Stella Cox, hereby pledge this Earth Day, April 22, 2015, to support green economy initiatives in Town of Ignacio, and recognize the volunteer efforts of the students of the Ignacio Schools and encourage others to undertake similar actions.

SIGNED THIS 15TH DAY OF APRIL, 2015

Stella Cox, Mayor



**Regular Meeting
of the Town Of Ignacio Board of Trustees
Wednesday, March 18, 2015**

I. CALL REGULAR MEETING TO ORDER: PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Stella Cox called the Regular Meeting to order at 7:01 p.m. **Trustees Present:** Mayor Protem Alison deKay, Thomas Atencio, Lawrence Bartley, and Cecilia Robbins. **Trustees Absent:** Dixie Melton and Edward Box (both were ill) **Staff:** Lee San Miguel, Town Manager; Georgann Valdez, Town Clerk; Lisa Rea, Town Treasurer; Dan Naiman, Community Development Coordinator; Jackie Mejia, Front Desk Clerk and IT and David Liberman, Town Attorney. **Audience:** Carol McWilliams from Pine River Times, Kip Turner, Aviation Director, Dgo-La Plata Airport Improvements Proposal, Tony Vicari, Administrative Assistant, Lisa Turner, Joe Kerby, La Plata County Manager; Brad Blake, La Plata County Commissioner and Rudy Mestas.

II. PUBLIC COMMENT: NONE

III. APPROVAL OF MINUTES: Trustee Robbins wanted the minutes to reflect that she was absent for the February 18 meeting due to illness. Mayor Protem deKay moved to approve the minutes of February 18, 2015 with that addition. Trustee Bartley seconded. The motion passed by unanimous voice vote.

IV. PRESENTATION: Durango-La Plata County Airport Improvements Proposal: Kip Turner, Director of Aviation gave a presentation on the proposed Airport Improvements. He outlined the Terminal building requirements, an overview of current challenges and listed the three alternatives that are being considered. They were: 1) renovate and expand existing terminal building; 2) construct new terminal building adjacent to existing and demolish the old terminal building; and 3) construct new terminal complex on east side of the airfield. Other areas discussed were costs of improvements, funding and possible costs to the citizen. Benefits to Alternative 3 were listed as were the agencies supporting it and the next steps which include continued public outreach, finalize alternate analysis chapter, financial analysis and airport layout plan. Questions from the audience and Board were answered regarding a new intersection, private aircraft, noise issues, funding sources and projection on ground breaking.

V. UNFINISHED BUSINESS:

A. Human Resource Payroll Cost Savings Recommendation requested by Board: Mr. San Miguel asked for an extension, stating he needed to contact all departments to include everyone in the process. Ms. Rea said the Board directed her to prepare payroll cost saving recommendations at the last meeting. Ms. Rea stated she has been working on this for the past month, has put in a number of hours and has used several resources including CML's HR List Serve, FSLA rules, Chief of Police and Tami, Chief Counsel from

CIRSA and discussed a couple issues with Mr. Lee San Miguel. Following a long phone conversation, she incorporated Tami's Tanoue suggestions into her recommendations. Ms. Rea gave the report to Mr. San Miguel for review. Ms. Rea stated she does not need more time and her report is complete and she is prepared to share it with the Board. Mr. San Miguel wants the Public Works' input as it impacts them directly. Trustee Atencio stated HR should be setting policy for PW not the other way around. The directive was to have Ms. Rea work with Mr. San Miguel and was given one month to compile the information. Mr. San Miguel repeated he wants everyone's involvement and the fair thing is to involve Public Works. The Board asked Mr. San Miguel why his recommendations were not completed in the time allowed. No answer was given. Ms. Rea stated her recommendations will not change. Following a discussion among the Board members as to whether the report should be given to them or to wait until Mr. San Miguel has prepared his recommendations, and whether the subject should be discussed in an executive session, **Trustee Atencio moved to have the Board see Ms. Rea's report. Trustee Robbins seconded. The motion passed by 4-1 with Trustee Bartley voting no.** Mr. San Miguel is to have his recommendations to the Board by the next meeting on April 1. Trustee Atencio asked if he has questions on the report, can he ask Ms. Rea. Mr. San Miguel stated the request has to go through him.

- B. Public Comment Statement:** After a brief discussion Mayor Protem deKay moved to adopt #3 of Trustee Melton's recommendation. Trustee Bartley seconded. The motion passed by unanimous vote. In the future the Public Comment Statement will read: *The Town Board values public comment and expects speakers to be courteous showing how one can respectfully disagree with others' views. Comments will address only the Board and may be limited to 5 minutes per person. Please do not comment on items listed on the agenda as opportunity will be given to comment during these discussions.*
- C. RHA Appointment Terms (Requested by RHA)** Mayor Protem deKay moved to have Mr. San Miguel serve a three year term and Trustee Robbins serve for one year. Trustee Bartley seconded. The motion passed by unanimous voice vote.
- D. Action following Town Manager Evaluation in Executive Session February 18, 2015:** Mayor Cox stated the Board completed Mr. San Miguel's annual evaluation on February 18, 2015 and during an executive Session the Board agreed by consensus to give him a 3% pay increase, retroactive from 11/18/14; This action must take place in an open meeting. Mayor Protem deKay moved to give Mr. San Miguel, based on the discussion in the February 18, 2015 Executive Session, a 3% annual merit increase. The motion failed due to lack of a second. Trustee Atencio moved to table the item until a full Board is present. Mayor Protem deKay seconded. The motion passed by unanimous voice vote. Mayor Protem deKay asked that this item be placed as: Town Manager Evaluation Discussion in Executive Session with an action Item to follow.

VI. NEW BUSINESS:

- A. Resolution 03-2015 Authorizing Town Treasurer to sign New Truck Lease Documents:**

Questions were answered by Ms. Rea and Mr. San Miguel. Mayor Protem deKay moved to adopt Resolution 03-2015 to authorize Town Treasurer Lisa Rea to sign the new truck lease documents. Trustee Bartley seconded. The motion passed by unanimous voice vote.

- B. **Ordinance 316 – Vacating a Portion of Ignacio Street to Ignacio School District –** Community Development Coordinator Dan Naiman explained the Town of Ignacio is vacating a portion of Ignacio Street and an application has been filed by Ignacio School District, the owners of the property abutting the property to be abandoned, seeking the vacation of the property set. The Town will reserve the rights of way for utilities and the School District will be responsible for maintenance of the Street. Mayor Protem deKay moved to approved Ordinance 316, vacating a portion of Ignacio Street to Ignacio School District. Trustee Bartley seconded. The motion passed by unanimous voice vote.
- C. **Bike Rally Discussion Vendor Fees and Rent:** Staff has been receiving calls from potential vendors for the motorcycle rally. The vendor's fee has been \$250 for the weekend and \$100/per space per day in Town parking lot. Following a brief discussion, staff will meet to discuss the impact of rally and future fees; Trustees Atencio and Robbins will represent the Board. The committee will meet and bring their recommendations back to the Board at the April 1 meeting.

VII. STAFF REPORTS:

- A. **Police Report:** No questions
- B. **Public Works:** Mr. San Miguel reported he received a call from Public Health Dept. stating everything was all clear from last month's sewer spill and the fence has been removed. Staff has received calls from citizens regarding the dust raised by the street sweeper. Mayor Cox asked about a backhoe incident regarding careless driving, Mr. San Miguel responded that he had already discussed it with the department. Trustee Atencio thanked staff for the PUC update and asked why a contractor was hired to help Public Works. Mr. San Miguel stated that extra help was needed, that the contractor was hired because Jackie did not have the time. In the future, it was recommended to use in-house staff. Lisa mentioned it was not in the budget to hire the contractor to do the work. Rudy Mestas, a citizen asked who is responsible for maintenance on CR 320B. Mr. Mestas was pleased that the Town filled a trench so quickly. Mr. San Miguel said the Town and County have a gentlemen's agreement to help each other out.
- C. **Treasurer:** County sales tax up over budget, while the city sales tax revenue is down, as anticipated. We have eliminated a debt service payment with the termination of contract on the Dump Truck/Snow Plow Debt. Minor changes to the revenue over expense report. Auditor will be coming in another week.
- D. **Planning:** Working with the School District to begin the annexation process of Ignacio Middle School and other school properties, and a portion of CR 320 and 320B as they must be the petitioner. Questions were answered regarding fees, the improvements of

the roads by the County, and discussion of other portions of 320A. The re-purposing of the old Elementary School was briefly discussed. Dan presented the Board with his final draft of the Downtown Design Guidelines for their review, with comments to be at the next Board meeting.

- E. **IT** – Jackie Mejia reported the Board’s new Chrome Books have arrived. She is setting them up with new Google Gmail addresses and will be offering training. We will go live with them the second meeting in April. This will eliminate the paper Board packets. Town Attorney discussed email conversations between Board members. He will have a summary of email policy and Open Meetings Laws.
- F. **Town Attorney:** Working with Mr. Naiman on Ordinance to vacate, right of way and land use code; Executive Session issues and Board Issues; Sewer District Dissolution finalization; with Mr. San Miguel on Open Records Request from the Durango Herald; Lease Purchase Resolution with Ms. Rea, sales tax issues and IPD Lawsuit. Questions on the Water Rights Issues were answered.
- G. **Town Manager:** Damaged gas meter questions were answered. Meetings with the Family Dollar folks were held. Sewer connections and sewer meter were discussed. Other questions regarding Mr. San Miguel’s report were answered; Southwest Outdoor Expo assistance; Fresh Farmer’s Market opening; Farmer’s Market location; GOCO Grant application award date and PUC Public Awareness visit.

VIII. TRUSTEE REPORTS: Regional Housing Authority meeting was canceled due to lack of quorum.

IX. MISCELLANEOUS: NONE

X. EXECUTIVE SESSION:

Legal Advice under C.R.S. Section 24-6-402 (4)(b): Mayor Protem deKay moved to go into Executive Session for the purpose of receiving Legal Advice. Trustee Atencio seconded. The motion passed by unanimous voice vote. The time is now 9:58 p.m. and the Regular meeting has been adjourned.

Before going into Executive Session, a brief discussion took place regarding the second Executive Session on the Agenda to discuss a personnel issue. There was a question if it was a personnel issue involving a particular employee or if it was to discuss the process of the mediation taking place with the employees. Town Attorney David Liberman explained the difference. Mr. San Miguel stated that the posting on the Agenda did not allow for a particular employee to speak in an Executive Session. The Executive Session was to discuss the mediation process. A directive was given to the Town Manager to involve a mediator to improve the relations between the employees during the February 18 Executive Session. Mr. San Miguel stated the first group meeting is scheduled for Tuesday, March 24, with the intent to close the office. Trustee Atencio moved to allow Town Clerk, Georgann Valdez into the second Executive Session to discuss a personnel matter. Trustee Robbins seconded. The motion passed by unanimous voice vote.

The Executive Session was concluded at 10:32. No action followed the Executive Session to receive Legal Advice. The Executive Session was held for the purpose previously stated.

Mayor Protem deKay moved to go into Executive Session for the purpose of discussing a Personnel Matter under C.R.S. Section 24-6-402 (4)(f). Trustee Bartley seconded. The motion passed by unanimous voice vote. The Regular meeting was closed at 10:35. The Executive Meeting was concluded at 11:25. The Executive Session was held for the purpose previously stated and no action followed the Executive Session.

- XI. ADJOURNMENT:** Being no further business before the Board, Mayor Cox adjourned the meeting at 11:25 p.m. The next regular meeting will be April 1, 2015, at 7:00 p.m. at the Abel F. Atencio Community Center at 570 Goddard Avenue.

Stella Cox, Mayor

Date

Attest: Georgann Valdez, Town Clerk

**Regular Meeting
of the Town Of Ignacio Board of Trustees
Wednesday, April 1, 2015**

I. CALL REGULAR MEETING TO ORDER: PLEDGE OF ALLEGIANCE AND ROLL CALL:

Mayor Stella Cox called the Regular Meeting to order at 7:08 p.m. **Trustees Present:** Thomas Atencio, Lawrence Bartley, Edward Box III, Dixie Melton and Cecilia Robbins. Mayor Protem deKay was absent (Spring Break). **Staff:** Lee San Miguel, Town Manager; Georgann Valdez, Town Clerk; Dan Naiman, Community Development Coordinator; Jackie Mejia, IT; James Brown Public Works Director and Jeremy Schultz, Public Works. **Audience:** Rudy and Lillian Mestas, Carol McWilliams from Pine River Times.

II. PUBLIC COMMENT: *The Town Board values public comment and expects speakers to be courteous showing how one can respectfully disagree with others' views. Comments will address only the Board and may be limited to 5 minutes per person. Please do not comment on items listed on the Agenda as opportunity will be given to comment during these discussions.*

III. UNFINISHED BUSINESS:

- A. Human Resource Payroll Cost Savings Recommendation from Town Manager:** Mr. San Miguel met with Public Works and the Police Department to gather ideas to contribute to what Ms. Rea has previously submitted. They agreed with most of her recommendations and had a few minor changes: Clarifying response time of thirty minutes for an on-call situation, otherwise, in case of emergencies 15 minutes and to include administrative staff in using comp time instead of overtime. A work session was suggested to discuss the recommendations, as well as bringing in CIRSA. Trustee Atencio asked if CIRSA was needed when our staff and the Board should work on the local policies. Mr. San Miguel stated we cannot control overtime, because emergencies cannot be predicted on utilities or computers. Trustee Melton stated Ms. Rea has already spoken with CIRSA when making her recommendations; Mayor Cox concurred that Ms. Rea has done other research in preparing her report. She stated it's not a matter of the comp time, but how it's being managed or monitored.

Mr. Brown stated that the overtime and comp time policy was updated in 2012 and believes the policy is good and working well. Overtime has been budgeted for projects; he needs people on ground after hours with the Town represented for utility emergencies, for broken police cars and snow removal. He feels putting a time limit to use comp time, such as two pay-period cap will short staff the Public Works Department. Some employees like to bank their comp time to use it for hunting or to take time off. Currently there is an 80-hour comp time cap and feels it is being properly managed. It wouldn't work if I have all kinds of people taking off on a Friday. We have a lot of construction projects, gas line replacement, road project, GIS Mapping. He feels

the 500 hours for Public Works is legitimate for the year and cheaper than hiring another person. Trustee Atencio said it's a matter of managing the overtime and comp time, employees shouldn't be building up both. Trustee Bartley stated it's a matter of having staff to cover, and for emergencies. Mr. Brown said it's just a matter of paying overtime as it happens. Trustee Atencio responded, the employee gets paid the same way, time and a half for overtime or compensatory time. Mr. Brown said when you send an employee home to use up comp time, the department is working under staffed. Trustee Atencio stated you don't have to allow two employees to go home or sent home on Friday but spread it out during the week; it's a matter of scheduling your staff's work time.

Trustee Robbins stated when she asked about how the budgeted overtime was being spent so early on in the year, she was concerned this line item might go over budget. She said she is aware of different situations arising to have employees work outside of the normal work hours, but wondered if the Department would stay within the allocated amount in the budget or will it need to be adjusted. Mr. Brown said it could be adjusted with a Supplemental Budget. It was recommended to have the staff discuss it prior to the work session with the Board. Trustee Melton would like the comp time used within the same year earned. Other Board members agreed to have the staff use it or lose it. Mr. Brown stated with the 80-hour cap, and setting a time limit on using it, if it can't be used, it should be paid. Trustee Melton suggested staff use their comp time within the same year earned and to schedule employees to take their comp time off. Trustee Box recommended HR be at the work session with the Board to represent staff. Mr. Brown said Public Works Dept. has a lot of on-call, overtime, comp time and should be at the work session. It was agreed that any employee could be at the work session. It will be placed on the next Board meeting agenda to set a date for the work session.

- B. Bike Rally Vendor Fees and Recommendations:** Staff and two Board members met to discuss the vendor fees for the 2015 Rally. A memo was sent to the Board regarding those in attendance and issues discussed. It was recommended to leave the vendor fees as before \$250.00 for the weekend and \$100 for the space rent in front of Town Hall; the costs will be covered by the revenue from the vendor fees. Trustee Robbins suggested charging for rent spaces according to the size in case of street closures, which will only take place if the number of vendors warrants it. Without knowing how successful the Rally could be, it's merely an estimation of the number of vendors that will come. Mr. San Miguel stated the Town agreed not to under charge, over charge or to promote vendor spaces.
- C. Downtown Design Guidelines Revisions and Comments:** The Board was given the opportunity to send comments to Mr. Naiman on the draft Downtown Design Guidelines Revisions. He is prepared to present the changes to the Municipal Code in form of an Ordinance at the April 15 meeting. The Planning Commission has not approved it; and has not met for a couple of months due to lack of quorum. The PC is scheduled to meet on Wednesday April 8, 2015.

D. 2015 Scheduling of Events – Google Calendar: The Board received their Chromebooks, set up with email, calendar, and training links. Events to be included are the CML Annual Conference, the High School Graduation, Chamber of Commerce Outdoor Expo, meetings, trainings or events.

IV. TRUSTEE REPORTS: Recommended by Mayor Cox: Change meeting times during the summer, change meetings to once a month. RHA meeting was attended by phone by Trustee Robbins.

V. MISCELLANEOUS: Mr. San Miguel informed the Board of a DOLA Grant available to small communities for \$75,000 with a \$25,000 match between four municipalities (Ignacio, Bayfield, Silverton and Pagosa Springs). The Grant could be used to hire a consultant to help the Town prioritize and implement one of the four plans IACAP, Nexus Plan, Chamber of Commerce and DCI already started (\$18,000/\$6200 for each entity). More research will be done at staff level on specifics for the Grant.

Board members had questions regarding emails; Boom boxes are really loud; Staff will research both concerns. Irrigation is available; Spring cleanup will be May 7-10 at the burn pile; Part-time, summer public works position is being advertised.

VI. ADJOURNMENT: Being no further business before the Board, Mayor Cox adjourned the meeting at 8:22 p.m. The next regular meeting will be April 15, 2015, at 7:00 p.m. at the Abel F. Atencio Community Center at 570 Goddard Avenue.

Stella Cox, Mayor

Date

Attest: Georgann Valdez, Town Clerk

WHEN IS A MEETING A MEETING?

**David H. McConaughy
Garfield & Hecht, P.C.
420 Seventh Street, Suite 100
Glenwood Springs, Colorado 81601
(970) 947-1936**

When is a Meeting a Meeting?

I. General Statutory Rule - Open Meetings Law - C.R.S. § 24-6-402

A. “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

§ 402(1)(b).

B. Meetings must be open to the public if:

- 1. Any public business is discussed (§ 402(2)(a) and (b)); or**
- 2. Formal action may be taken (§ 402(2)(a) and (b)); and**
- 3. The meeting is attended by the required number of officials:**

a. Two or more for “state public bodies” (§ 402(2)(a))

- (1) state agency**
- (2) state authority**
- (3) institute of higher education including University of Colorado**

b. A quorum¹ or three, whichever is fewer, for “local public bodies” (§ 402(2)(b))

- (1) counties**
- (2) cities and towns, including home rule**
- (3) special districts**

¹A quorum is the minimum number of officials required to be present in order to conduct business; typically a majority of the elected officers.

- (4) school districts
- (5) local or special improvement districts
- (6) service districts

C. Requirements of public meetings.

- 1. Notice 24 hours prior to meeting (§ 402(2)(c))
- 2. Minutes
 - a. Required for all meetings of state public bodies
(§ 402(2)(d)(1))
 - b. Required for any meeting of a local public body “at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur.”
(§ 402(2)(d)(II))
 - c. Exceptions and special rules apply for executive sessions.
See § 402 (beyond the scope of this outline).

II. Work Sessions

- A. Definition: A noticed public meeting of a local public body at which no formal action will occur or could occur. Also referred to as a “study session.”
- B. Typically these sessions are to review complicated issues with the local public body (such as the Open Meetings Law, or water rights, etc.), to brainstorm about pending projects (e.g., goals for a new comprehensive plan), and to give staff “guidance.” This analysis may also apply to retreats.
 - 1. Is staff guidance adopting a position?
- C. Issue: What records must be kept?
 - 1. Detailed minutes not required. But what if action “could occur?”
 - 2. Generalized minutes: “A discussion of the Town’s water rights took place.”
 - 3. Tape recording – keep the option open until after the meeting.
 - 4. Take minutes anyway to appease the public and the paranoia of the government attorney?

III. Informal Meetings with Less than a Quorum Where Public Business Is Discussed

- A. Fact Pattern:** A landowner is considering filing an annexation petition and subdivision application with a town but has not yet done so. Potential issues to address in a future annexation agreement include traffic impact fees, open space dedication, density, and infrastructure requirements in light of current capacity. The landowner requests a meeting with himself, his attorney, the town manager, the mayor, and the most senior trustee to request guidance on these issues and to learn what to expect if he files an application. The town board of trustees consists of seven members, and a quorum consists of four persons. The meeting is arranged without any involvement of the town attorney and occurs over lunch at a local restaurant. No public notice is posted, and no minutes are kept. An activist citizen observes the meeting and writes a letter to the editor of the local newspaper complaining of back-room, secret politics.
- B. The benefits of such a meeting:** The landowner learns much about the history of the town and the personalities of the elected officials and is more likely to file an application that addresses the town's concerns from the beginning. The developer is able to plan and budget accordingly. This leads to a more efficient and less contentious land use application process and a better development.

C. The political problem: Regardless of the legality or illegality of the meeting, the citizen is outraged, and the mayor loses his reelection bid based on a campaign of his being "in bed" with the developer. Instead of streamlining the process, the process is poisoned before it starts.

D. The Law:

1. The meeting is a "meeting" because public business is discussed, but it is not a public meeting. No minutes or notice were required because only two officials of a local public body were present.

2. Does the meeting taint a quasi-judicial proceeding?

a. Quasi-judicial proceedings involve a determination of the rights, duties, or obligations of specific individuals on the basis of the application of existing legal standards to facts developed at a hearing. Examples include:

(1) Subdivision applications. Reynolds v. City of Longmont, 680 P.2d 1350, 1352 (Colo. App. 1984).

(2) Rezoning. Snyder v. City of Lakewood, 541 P.2d 371 (Colo. 1975).

(3) Applications for approval of development plans. Cherry Hills Resort Development Co. v. City of Cherry Hills Village, 757 P.2d 622 (Colo. 1988).

- b. Quasi-judicial decisions must be based "on the record" not on *ex parte* information.
 - (1) C.R.S. § 24-4-105(14) prohibits state officials in agencies governed by state Administrative Procedure Act from receiving or considering *ex parte* information. Violations may potentially invalidate a decision. See Peoples Natural Gas Division of Northern Natural Gas Co. v. Public Utilities Comm'n, 626 P.2d 159 (Colo. 1981).
 - (2) C.R.C.P. 106 challenges are based on the record.
 - (3) Due process and 42 U.S.C. § 1983 (damages).
 - c. Fundamental right to petition the government.
 - (1) First Amendment to United States Constitution.
 - (2) Article II, Section 24, Colorado Constitution.
3. Ethical considerations for the landowner's attorney.
- a. Rule of Professional Conduct 4.2: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

(1) “Authorized by law” - First Amendment?

(2) Formal Ethics Opinion 93:

(a) Government is not “represented” on every matter simply because it has general counsel. It must have taken affirmative steps to refer the matter to its counsel.

(b) “A balancing test favoring *ex parte* contacts in close cases is appropriate because when the government is a party there is a fundamental right to petition the government for a redress of grievances under both the First Amendment and Article II, Section 24, of the Constitution of the State of Colorado. This is particularly true in a legislative, regulatory or administrative setting.” (Emphasis added).

(3) Rule of Professional Conduct 3.5. A lawyer shall not communicate *ex parte* with a judge or other official except as permitted by law.

(a) In quasi-judicial proceedings, the “authorized by law” exception in Rule 4.2 does not permit

an attorney to engage in *ex parte* contacts with
elected officials. Ethics Opinion 93.

(4) Code of Judicial Conduct Canon 2. A judge should
avoid impropriety and the appearance of impropriety.

(a) Wells v. Del Norte School District C-7, 753
P.2d 770 (Colo. App. 1987) (teacher entitled
to new hearing where hearing officer sat at
restaurant table with counsel for school board
during lunch break, even though case not
discussed).

4. No application was actually pending. Further, because it was an
annexation, the board members arguably had no jurisdiction.

E. Practical lesson: Obtain the consent of the government attorney and make full
disclosure, or just don't do it.

IV. Cocktail Parties

- A. Meeting must be “convened to discuss public business” and requisite number of officials must be “expected to be in attendance.” C.R.S. § 24-6-402(2).

1. Chance social gatherings not “convened” or “expected.”
2. Post a notice of the Town holiday party.

- B. Board of County Commissioners, Costilla County v. Costilla County Conservancy District, 88 P.3d 1188 (Colo. 2004).

1. A quorum of county commissioners (2) attended an unnoticed dinner meeting at which matters of public interest were discussed regarding a mine. Following the meeting, the mining company resolved various issues with the Colorado Department of Public Health and Environment, which led to building permits being issued by the county to the mining company, and a monetary donation from the mining company was made to and accepted by the county several weeks later. A local conservancy district was unhappy with the outcome and sued, claiming that the meeting should have been noticed and open to the public.
2. Held: no notice was required. “A meeting must be part of the policy-making process to be subject to the requirements of the OML. A meeting is part of the policy-making process if it concerns a matter related to the policy-making function of the . . . public body. . . .”

3. "There must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting."
 4. The Court found that the county commissioners were passive guests at the dinner and did not actually take any public action based on what they heard there.
- C. Lesson: Don't draft the next ordinance on a cocktail napkin.

V. Electronic Meetings

- A. "Meeting" includes "any kind of gathering. . .by telephone, electronically, or by other means of communication." C.R.S. § 24-6-402(b).**
- B. Conference Calls – the meeting in an empty room.**
 - 1. Provide notice with a speaker phone in a room open to the public.**
- C. E-mail.**
 - 1. "If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section." C.R.S. § 24-6-402(2)(d)(III).**
 - a. "Among themselves"**
 - (1) Less than a quorum?**
 - (2) Mass e-mails vs. serial emails**
 - (3) E-mails between individuals and third parties (e.g.,
Town Manager or Town Attorney)**
 - b. How to give notice and make the meeting open?**
- D. Chat Rooms vs. Message Boards.**
 - 1. One not a "gathering?"**

2. Beck v. Shelton, 267 Va. 482 (Virginia 2004) (e-mail communications held not to be a meeting under Virginia statute, but court distinguishes, in dicta, chat rooms and instant messaging).

E. **Communications Still Open Records.** E-mails are "writings" pursuant to the Open Records Act. C.R.S. § 24-72-202(7). However, the public's right to information must be balanced against privacy concerns. See Denver Publishing Co. v. Board of County Commissioners of Arapahoe County, 121 P.3d 190 (Colo. 2005). To be public records, e-mails must have a demonstrable connection to public functions or the receipt or expenditure of public funds. Id. at 203.

F. **Additional Resources.**

1. Sunshine in Cyberspace? Electronic Deliberation and the Reach of Open Meeting Laws, by Stephen Schaeffer, 48 St. Louis U.L.J. 755 (2004).
2. Some Assembly Required: The Application of State Open Meeting Laws to Email Correspondence, by John F. O'Connor and Michael J. Baratz, 12 Geo. Mason L. Rev. 719 (2004).
3. Exploring Virtual Legal Presence: the Present and the Promise, by Jessica M. Natale, 1 J. High Tech. L. 157 (2002).

David Liberman

From: "Wells, Patricia L." <Patricia.Wells@denverwater.org>
To: <attylist@cml.org>
Sent: Monday, January 22, 2007 5:52 PM
Subject: RE: [Attorneys Listserv] Council Email Communications

I have been concerned about the ubiquitous use of e-mail as well, but haven't gathered my thoughts very well. I appreciate David and Lee being willing to share theirs. I do have a couple of cases to recommend as good discussions of the issues involved, even though they are out-of-state. Both cases also discuss cases from yet other jurisdictions with interesting fact patterns that will probably sound all too familiar.

- Wood v. Battle Ground School District, 27 P.3d 1208 (Wash App. 2001). A series of e-mail exchanges was held to be a meeting in violation of the open meetings law. The requirements are (1) participation by a quorum, not necessarily all at one time; (2) on a matter likely to come before the body; (3) with an intent to reach a conclusion about an issue.
- Del Papa v. Board of Regents, 956 P.2d 770, 778 (Nov. 1998). Serial telephonic communications that resulted in a press advisory not being sent constituted a meeting. "That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes. However, if a quorum is present, or is gathered by serial electronic communications, the body must deliberate and actually vote on the matter in a public meeting."

Patti Wells
Denver Water Legal Division
 patricia.wells@denverwater.org

This message and any attachments are intended only for the use of the addressee and may contain information that is privileged and confidential. Any inadvertent receipt shall not be a waiver of any privilege or work product protection. If the reader of the message is not the intended recipient or authorized representative of the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of this communication is prohibited. If you have received this communication in error, please notify Denver Water Legal Division immediately by replying to this message, and permanently deleting the message and any attachments from your system.

From: attylist-owner@cml.org [mailto:attylist-owner@cml.org] **On Behalf Of** David H. McConaughy
Sent: Wednesday, January 17, 2007 12:32 PM
To: attylist@cml.org
Subject: RE: [Attorneys Listserv] Council Email Communications

At a minimum, tell them not to do "mass emails." IE, an email from one council member to all the others would probably violate the Open Meetings Law. Individual email between 2 of them would probably not, although they could still be open records. What happens if two email each other, and then forward to a 3rd, then a 4th, etc. is less clear, but these types of "serial emails" are probably best avoided.

Arguably, one email to everyone might not be a meeting, but as soon as someone hits "reply all" it sure sounds like one.

If there is really an urgent issue that needs to be discussed via email for some reason, individual council members could email you, and then you can reply individually and claim privilege on the communications.

I will send you a copy of an outline from a CLE I presented on this topic with relevant citations. Good luck!

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January 18, 2007

TO: District

FROM: Leavenworth & Karp, P.C.

RE: Board Member Email Communications

This memorandum responds to the District Board of Trustees' inquiry regarding the legality of conducting Board meetings via email.

I. Introduction

The District (the "District") is a political subdivision of the state organized pursuant to the provisions of Part 1 of Article 90, Title 24 of the Colorado Revised Statutes. As a Colorado library district, the District's meetings are subject to the requirements of the Colorado Open Meetings Act, codified at C.R.S. §24-6-401, *et seq.*, and the Colorado Open Records Act codified at C.R.S. §24-72-201, *et seq.* The stated purpose of the Open Meetings Act is declare as a matter of statewide concern and policy that "formation of public policy is public business and may not be conducted in secret." C.R.S. §24-6-40. The stated purpose of the Open Records Act that "all public records shall be open for inspection by any person at reasonable times...." C.R.S. §24-72-201.

In Colorado, "Meeting" includes "any kind of gathering... by telephone, electronically, or by other means of communication." C.R.S. §24-6-402(b). Thus, electronic meetings are included in the statutory definition of meeting. Less clear is how email or other types of electronic communication can be used as an appropriate forum for public meetings. A corollary issue is informal use of emails between board members that may rise to the level of public records subject to disclosure. Unfortunately, these topics raise more questions than answers, and case law and statutory authority provide little guidance. Even so, electronic communications between public entity board members are increasingly widespread, and we recommend that the Board adopt at least an informal policy regarding email.

II. Defining an "electronic meeting"

The Open Meetings Act states that whenever three or more members (or a quorum of the members, if fewer than three) of the local public body, in this case the Board, get together and public business is discussed or formal action may be taken, the gathering is a "meeting" and open to the

public. C.R.S. §24-6-402(2)(b). In *Board of County Commr's of Costilla County vs. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004), the Colorado Supreme Court provided direction concerning what types of meetings are covered by the Open Meetings Act. The Court stated that for a gathering to be subject to the Open Meetings Act requirements, "there must be a demonstrated link between the meeting and policy-making powers of the government entity holding or attending the meeting." *Id.* The Court continued that such a link exists when the meeting "is convened to discuss or undertake... a rule, regulation, ordinance, or formal action." *Id.* "Merely discussing matters of public importance," does not trigger the requirements of the Open Meetings Act. *Id.* at 1189. This concept is also contained in the statute itself:

If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a 'meeting' within the meaning of this section. C.R.S. §24-6-402(2)(d)(III).

The extent of "relating to pending legislation or other public business" has not been further defined by the courts, so the Board should assume that this covers a broad range of potential communication.

III. Public access to "electronic meetings"

The email analysis described above is important because if the level of email discourse between Board members rises to the level of a meeting as defined by the Open Meetings Act, it must be open to the public. For example, if emails are exchanged among a quorum or three or more Board members, whether by direct participation, forwards, etc., the public must have access. The requirement presents numerous practical problems for email meetings of the Board that still comply with the openness, notice, and other requirements of the Open Meetings Act. Issues include how to give "full and timely notice" in advance, what kind of agenda information should and could be provided, and how to treat executive sessions. In a related context, telephone meetings have been proposed as an alternative to in-person meetings under the Open Meetings Act. To conduct such a meeting, regular notice is posted with a call-in number for the public. The meeting is conducted as a conference call, and all attendees have the opportunity to participate simultaneously by phone. We understand that telephone meetings are currently used in Colorado, and other states have upheld their legality under their own open meetings laws.

An electronic meeting presents an even greater challenge than telephone conferencing. Notice of the meeting could be published, but current technology makes it extremely difficult, if not impossible, to provide adequate public access to the electronic meeting. Similarly to telephone meetings, a chat room could be set up that allowed public participation. However, this technology is relatively advanced. The District would probably need to hire an internet administrator to ensure the forum runs correctly. Even with a functioning chat room in place, a valid argument exists that not all members of the public have access to this format or the sophistication to use the technology. Unlike telephones, not everyone enjoys convenient access to the internet. The next step down in electronic technology from a chat room, an online message board where the public could post comments, would most likely fail to meet the public participation requirements of the Open Meetings Act because a

message board does not allow for real time discourse between the public and Board members. Additionally, the same technological and access issues exist as with the chat room. In light of these constraints, we do not advise the Board to conduct public meetings by email or other electronic media at this time. Electronic meetings may very well be the wave of the future, but at this time they do not allow for adequate public participation under Colorado law.

IV. Other issues associated with official use of email

The Board is also advised to use caution in communicating informally by email. Pursuant to Colorado law, email correspondence often rises to the level of "public records" regulated by the Colorado Open Records Act. Pursuant to the Open Records Act at §24-72-202(7), emails are "writings" and so may be public records depending on the content. The Colorado Supreme Court has held that the public's right to information must be balanced against privacy concerns. See *Denver Publishing Co. v. Board of County Comm'rs of Arapahoe County*, 121 P.3d 190 (Colo. 2005). To be public records, emails must have a demonstrable connection to public functions or the receipt or expenditure of public funds. *Id.* at 203. This is the same concept discussed in the context of the Open Meetings Act in Section I above. Even if all Board members do not participate in an email exchange, the correspondence could be subject to the Open Records Act and thus open to public review if they pertain to, for example, a proposal pending before the Board. Board members should always consider whether the content of their Board-related emails are appropriate under both Acts and assume such correspondence may be a matter of public record.

V. Words of caution

More and more public entities are receiving requests under the Open Records Act for all email communications between and among Board members, staff, and Board members and staff. Depending on the scope of the request, the public entity in question must typically hire an outside computer consultant to access Board members' personal computers and retrieve the requested information. Such experts are retained for efficiency, but also because the entity will need an individual with expertise in the area to testify that all requested email communications have been retrieved. In short, a third party will have access to all the Board members' emails on their personal computers in order to sort out the open records materials. As an additional warning, it has become apparent in recent years that more and more public officials are facing scrutiny and court censure as the result of communicating "secretly" via email. For an example, see the attached recent article.

VI. Conclusion

In conclusion, the District is a public entity subject to the requirements of the Colorado Open Records Act and the Colorado Open Meetings Act. As such, the Board must conduct the business of the District in a manner open to the public. Emails between Board members clearly give rise to claims of illegal secret meetings and expose the District to Open Records Act requests covering all email correspondence. The District should also remember that both Acts contain attorney fee provisions rewarding successful plaintiffs. In light of the potential legal entanglements and the public's right to access even the Board members' private computers, we advise the Board to use extreme caution or to forego use of email related to the business of the District.

FAQ: OPEN MEETINGS REQUIREMENTS

By Jason Meyers, CML law clerk

The FAQ column features frequently asked questions submitted to the Colorado Municipal League. This information is of a general nature and should not be interpreted as legal advice. Local facts determine which laws may apply and how, so you should always consult your municipal attorney before proceeding.

Q: Why does Colorado require open meetings?

A: The purpose of the Colorado Open Meetings Law (COML), along with other Sunshine laws around the country, is to grant access to meetings at which public business is considered. This is meant to give citizens an opportunity to become informed on issues, and to allow citizen participation in the decisionmaking process.

Q: What constitutes a "meeting"?

A: The COML, when applied to local governments, requires a quorum or three or more members of any local public body (whichever is fewer) to constitute a "public body" to which the statute applies.

C.R.S. § 24-6-402 defines a "meeting" as any kind of gathering convened to discuss public business, or where formal action may be taken. This includes meetings in person, by telephone, electronically, or by other means of communication. It is important to note that the mention of electronic communication in the statute extends to email messages. C.R.S. § 24-6-402(2)(d)(III) specifically mentions that use of electronic mail to discuss pending legislation or other public business shall be subject to the COML. In other words, conversations between local officials via email can be considered "meetings" under the statute.

Q: What types of meetings are required to be open?

A: As a general matter, there must be a link between the meeting and the policymaking of the public body holding the meeting. The COML specifically provides an exception for chance meetings or social occasions where public business is not the central purpose of the meeting. Meetings that concern matters related to the policymaking function of a public body are required to be open. A meeting is part of the policymaking process when the meeting is held for the purpose of discussing or undertaking a rule, regulation, ordinance, or formal action.

Q: When is a meeting not required to be open to the public?

A: The default rule is that all meetings are to be open to the public. With this in mind, there are a few statutory exceptions that allow the

governing body to discuss matters in closed session. These closed sessions are called "executive sessions" and are allowed for specific topics, including property transactions, attorney conferences, confidential matters under state and federal law, security arrangements or investigations, development of a negotiating position, personnel matters, and documents protected under the Colorado Open Records Act.

Specific procedures and announcements are required prior to entering into executive session. Many municipalities utilize standard procedures to ensure proper compliance with the COML. Despite statutory guidelines, issues involving executive session can be difficult to determine and can lead to costly litigation. For this reason, it is always prudent to follow protocol and seek guidance from your municipality's attorney.

In general, executive sessions are for deliberation, not decisionmaking. COML provides that "no adoption of any proposed policy, position, resolution, rule, regulation, or formal action ... shall occur at any executive session that is not open to the public" (C.R.S. § 24-6-402(4)). Further, courts have made it clear that a "rubber-stamping" in an open meeting of a decision made in executive session will not be tolerated.

Q: When must a municipality provide notice of a meeting?

A: The COML requires municipalities to give "full and timely" notice to the public in order to facilitate the public's right to attend meetings. While the statute itself does not limit or specify a definition of "full and timely," it does provide that posting notice 24 hours in advance is sufficient (C.R.S. § 24-6-402(2)(c)).

While 24 hours or more is the standard, Colorado courts have found that the COML's notice provisions are a flexible standard. For instance, there have been some exceptions made by the Colorado Court of Appeals for emergency meetings where the actions taken were later ratified by a normal meeting with full and timely notice.

There also is some debate on what constitutes "full" notification. The Colorado Supreme Court

has said that courts will apply "an objective standard," considering the adequacy of a notice in light of the knowledge of an ordinary member of the community to which the notice is directed.

Q: Where can a municipality post notice of a meeting?

A: C.R.S. §24-6-402(2)(c) provides that notice must be "posted in a designated public place within the boundaries of the local public body." Many municipalities have posted notice in the same place for several decades. With the advent of social media, additional avenues for informing the public have become available. As with all new technology, social media offers advantages along with many legal challenges. CML recently published a *Knowledge Now* on this topic that can provide more insight (available to members when they log in at www.cml.org under Information > Resources for municipalities > Periodicals > Knowledge Now).

In addition to posting notice at a designated place, the clerk of each local public body must maintain a list of people who have requested notification of all meetings or of meetings when certain specified policies will be discussed. The clerk is required to provide reasonable advance notification of such meetings.

Q: What happens if the COML is violated?

A: Although members of governing bodies do not risk criminal punishment for violations, any action taken at a meeting that does not comply with the COML requirements is void. The COML also allows courts to enforce the requirements of the COML through an injunction.

Finally, if the court finds that a public body has violated the COML, it must award costs and reasonable attorney fees to the prevailing party. On the other hand, a prevailing public body may only be awarded costs and attorney fees if the court finds the action frivolous, vexatious, or groundless, a very high standard to meet.

For more information, visit www.cml.org, or consult CML's *Open Meetings, Open Records*, published in 2008.

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25-OCT COLAW 99
25-OCT Colo. Law. 99

Page 1

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Colorado Lawyer
October, 1996

Specialty Law Column

Local Government Newsletter

***99 E-MAIL, OPEN MEETINGS, AND PUBLIC RECORDS**

James G. Colvin, II

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WESTLAW LAWPRAC INDEX

LOA -- Office Automation: Computer Hardware & Software

It is the policy of the state of Colorado "that the formation of public policy is public business and may not be conducted in secret," [FN1] and "that all public records shall be open for inspection by any person at reasonable times except as otherwise provided by law." [FN2] With this declaration, Colorado recognized citizens' rights to attend government meetings and have access to government information.

The presumption in Colorado is that government meetings are open and that government records are accessible. [FN3] Exceptions to the presumption of openness and accessibility are specifically provided for in the Open Meetings Law and the Public Records Act, and generally are that which would constitute an unwarranted invasion of individual privacy or place the government in a disadvantageous position. [FN4] Advances in communications technology caused Colorado's Open Meetings Law and Public Records Act to be outdated as to digital data transmission and storage.

This article discusses state legislation adopted in 1996; the Colorado policy of openness and accessibility; implications of the use of electronic sequential communications systems, including monitoring; and using case-by-case determinations to deal with rapidly changing technology.

1996 Legislation

The 1996 Colorado legislature responded to advances in communications technology by passing two bills amending the Open Meetings Law and Public Records Act to deal with electronic communications. House Bill ("H.B.") 96-1314 amended the Open Meetings Law by adding "electronically" to the definition of meetings, [FN5] and specified that closed executive meeting minutes must indicate the topic of the executive session rather than the "general topic" of the executive session. [FN6] H.B. 96-1314 also requires publicly announcing the topic for executive session discussion in a properly called open meeting prior to holding an executive session. [FN7] Senate Bill ("S.B.") 96-212, discussed in detail below, specifies that if elected officials use e-mail to discuss public business "among themselves," the electronic mail is subject to the Open Meetings Law. [FN8]

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S.B. 96-212 amended the Public Records Act by redefining "writings" [FN9] to include digitally stored data, including electronic mail; "correspondence" [FN10] to include communications sent by electronic mail; and by defining "electronic mail" [FN11] as a message transmitted between two or more electronic terminals whether or not the message is converted to hard copy. The definition of "public record" [FN12] was amended to include correspondence of elected officials except when such correspondence is a work product, is not connected to governing, or is a confidential constituent communication.

"Work product" [FN13] prepared for elected officials is not a public record [FN14] and is defined as all intra- or inter-agency materials that express an opinion or are deliberative in nature, and are communicated for the purpose of assisting elected officials in reaching a decision. However, any work product that expresses a final decision by an elected official or is a final fiscal or performance audit or a final accounting or final financial report is a public record. [FN15] If an official custodian maintains correspondence received or sent by an elected official and a request is made for the correspondence, before the official custodian can allow inspection he or she must consult with the elected official to determine whether the correspondence is a public record. [FN16]

A policy regarding the retention, archiving, and destruction of electronic records must be adopted by the official custodian, and the official custodian should be prepared to assist the public in locating specific electronic public records. [FN17] Requested public records must be made available within three days, but an extension of seven days is allowed if the request is without sufficient specificity or if the requested agency needs to devote its resources to meet other requests. [FN18] However, in no event shall a request "that relates to a single, specifically identified document" not be met within the three-day period. [FN19]

Finally, on or before July 1, 1997, state agencies and political subdivisions with electronic mail systems must adopt a written policy on monitoring electronic mail specifying the circumstances under which it will be conducted and stating that correspondence of employees in the form of e-mail may be a public record. [FN20]

Policy of Openness And Accessibility

Governing by elected officials consists of forming and adopting courses of action that constitute public policy. Public policy is made by elected officials or their appointed bodies when they convene to discuss¹⁰⁰ public business by any means of communication, including electronic communication. Action to adopt public policy can occur only at an open meeting for which full and timely notice has been given. [FN21] Thus, citizens have knowledge of the meetings at which public policy is formed, as well as of closed executive sessions that can be held only to discuss limited topics after notice of the topics for discussion is given at the preceding open meeting. No formal action may be taken in a closed meeting. [FN22] Finally, public policy decisions are recorded in minutes, which are public records accessible for inspection. [FN23]

With limited exceptions, the public has the right to inspect all writings made, maintained or kept for use in governing or involving receipt or expenditure of public funds. [FN24] Open meetings law applies only to elected officials or their formally constituted bodies, not the bureaucracy. Accessible public records law generally applies to the bureaucracy that keeps the records of the business of government. Unlike open meetings, where access does not require a request or cost anything, access to public records requires citizens to specify what they want and then to pay for what is reproduced and the cost of providing the record. [FN25]

Implications

S.B. 96-212 includes an uncodified legislative declaration recognizing that e-mail in government creates unique circumstances; that e-mail is like a telephone that is regarded as private, but that, unlike a telephone, e-mail creates an electronic record; and that elected officials are not "equipped" as official custodians to determine whether e-mail communications "might be public records." [FN26] The "act is intended to balance the privacy interests and practical limitations of public officials and employees with the public policy interest in access to government information." [FN27]

E-mail is a service that two or more parties use to transmit words converted into digital form between two or more computer terminals through a service provider where the message is maintained in electronic storage until accessed by the recipient. E-mail is easy to use and time-saving, and, with a mouse-click, detailed messages can be sent to many parties simultaneously. However, that same message can be resent by anyone whose computer receives it, raising security concerns.

E-mail creates an electronic record that cannot be totally deleted, at least until "electronic shredders" become available. Because e-mail cannot be deleted, it is essentially nondeniable. However, its trustworthiness may be questioned because it is nothing more than words stored in digital format for sending, saving and searching, and it may be possible to reconstitute e-mail to say other than what the original said. E-mail discovery can be undertaken of an entity's e-mail by a narrowing word search to produce electronically stored documents.

Voice mail, which operates like e-mail but differs in that the digital message takes the form of the sender's voice, is not specifically covered by the 1996 legislation. Like e-mail, voice mail is a sequential communication system as opposed to real time communication, and this poses "meeting" definition problems. Teleconferencing, on the other hand, is a real time communication system and may be covered by the Open Meetings Law.

Encryption software is available for ensuring personal privacy. This may be a problem as to e-mail open meetings, electronic public record storage, and discovery. Neither of the 1996 bills changes the fact that "privileged information" as found in CRS § 24-72-204(3)(a)(IV) is nondisclosable, and thus under the governmental deliberative process privilege, most work product would be nondisclosable. [FN28]

The e-mail policy as required by S.B. 96-212 may have negative consequences. [FN29] Whether or not to monitor e-mail is a major policy decision involving employee privacy issues, but may be the only way to ensure that e-mail is used for legitimate purposes. Questions regarding defamation, eavesdropping, wiretapping and harassment, all with First Amendment implications, arise from e-mail usage. Monitoring could destroy the informality of new communication technology and thus its effectiveness.

Conclusion

Open meetings and public records law applied to changing communication technology may never be able to ensure open meetings and accessible records. It is the responsibility of elected and public officials to observe the intent of the sunshine laws to prevent public business from being decided in secret. This does not mean government should not use effective and efficient communication technology, but rather that if government uses it, openness and accessibility must be recognized.

Elected and public officials have a duty to the citizens to conduct government in accordance with the law, and if there are legitimate questions of openness as to meetings and accessibility of records, those questions should be addressed on a case-by-case basis by government attorneys. If those opinions are questioned, the

25-OCT COLAW 99
25-OCT Colo. Law. 99

Page 4

courts have the authority to adjudicate closed meetings by injunction, [FN30] or as to closed records by ruling on a show-cause application to the official custodian who denied access, [FN31] or on a request of the official custodian to restrict disclosure. [FN32] In order to be effective and efficient, government must use the latest communication technology. If that means venturing into areas not covered by current sunshine law, government should create its own policies to meet the needs of an informed public. [FN33]

FNNote 1. This month's article was written by James G. Calvin II, City Attorney for Colorado Springs, (719) 578-6670. Attorneys representing public or private clients in the areas of municipal, county, and special or school district law are encouraged to submit articles for publication.

[FN1]. CRS § 24-6-401 *et seq.* (Open Meetings Law).

[FN2]. CRS § 24-72-201 *et seq.* (Public Records Act).

[FN3]. *See Cole v. State*, 673 P.2d 345 (Colo. 1983); *Sargent School Dist. v. Western Services*, 751 P.2d 56 (Colo. 1988).

[FN4]. *See* CRS §§ 24-6-402(4) and 24-72-204.

[FN5]. CRS § 24-6-402(1)(b), amended by H.B. 96-1314.

[FN6]. CRS § 24-6-402(2)(d)(II), amended by H.B. 96-1314.

[FN7]. CRS § 24-6-402(4), amended by H.B. 96-1314.

[FN8]. CRS § 24-6-402(2)(d)(III), amended by S.B. 96-212.

[FN9]. CRS § 24-72-202(7), amended by S.B. 96-212.

[FN10]. CRS § 24-72-202(1), amended by S.B. 96-212.

[FN11]. CRS § 24-72-202(1.2), amended by S.B. 96-212.

[FN12]. CRS § 24-72-202(6), amended by S.B. 96-212.

[FN13]. CRS § 24-72-202(6.5), amended by S.B. 96-212.

[FN14]. CRS § 24-72-202(6)(b)(II), amended by S.B. 96-212.

[FN15]. CRS § 24-72-202(6.5)(c), amended by S.B. 96-212.

[FN16]. CRS § 24-72-203(2)(b), amended by S.B. 96-212.

[FN17]. CRS § 24-72-203(2)(b), amended by S.B. 96-212.

[FN18]. CRS § 24-72-203(3)(b), amended by S.B. 96-212.

[FN19]. CRS § 24-72-203(3)(c), amended by S.B. 96-212.

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25-OCT COLAW 99
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Page 5

[FN20]. CRS § 24-72-204.5, amended by S.B. 96-212.

[FN21]. CRS § 24-6-402(2)(c).

[FN22]. CRS §§ 24-6-402(4) and 24-6-402(8).

[FN23]. See Attorney General Opinion #93-1, which states that minutes should be sufficient to provide insight into intent behind particular actions.

[FN24]. CRS § 24-72-203.

[FN25]. CRS § 24-72-205.

[FN26]. Section 1 of S.B. 96-212.

[FN27]. *Id.*

[FN28]. See *Van Aire Skyport v. FAA*, 733 F.Supp. 316 (Colo. 1990).

[FN29]. CRS § 24-72-204.5, amended by S.B. 96-212.

[FN30]. CRS § 24-6-402(9).

[FN31]. CRS § 24-72-204(5).

[FN32]. CRS § 24-72-204(6)(a) and (b).

[FN33]. Recent articles on e-mail, open meetings and public records include: Anderson, "Public Records and Privacy Issues in the Computer Age," 37 *Municipal Lawyer* 10 (May/June 1996); Samel, "Government Use of E-mail: Special Considerations," 19 *State and Local Law News* 5 (Winter 1996); Strong, "Attorney-Client E-mail: A Waiver of Privilege?" 25 *The Colorado Lawyer* 27 (March 1996); Dubois, "The Zimmermann Case: Issues in Encryption Software," 25 *The Colorado Lawyer* 23 (May 1996); Seifman and Trepanier, "Evolution of the Paperless Office: Legal Issues Arising Out of Technology in the Workplace. Part I. E-Mail and Voicemail Systems," 21 *Employee Relations Law Journal* 5 (Winter 1995/96); and Strong, "Employee E-Mail: Creating Employer Liability?" 24 *The Colorado Lawyer* 753 (April 1995).

25-OCT Colo. Law. 99

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Transit Waste LLC
P.O. Box 215
203 Idaho Street
Bloomfield, New Mexico 87413

March 30, 2015

Mr. Lee San Miguel
Town Manager
Town of Ignacio
540 Goddard
P.O. Box 459
Ignacio, CO 81137

Re: WCA / Transit Waste Rate Increase

Dear Mr. Lee

We at Transit Waste want to thank you and the Town of Ignacio for allowing us the opportunity to provide solid waste collection and disposal service to the residents and business owners of your great community. The efforts of you and your staff have enabled us to maximize our service to your community.

As you are aware, our contract provides for a rate increase based on the Consumer Price Index (CPI). Due to the cost of business continuing to increase; we are proposing an annual rated increase based on the CPI of 1.32% (see attached) effective upon approval of the Town Board.

Transit Waste is committed to providing the very best service at the lowest possible price to the Town of Ignacio. We hope to continue this for many years to come.

We appreciate your consideration in this matter. Please feel free to contact me at 505-634-2510, if you have any questions or need any further information.

Respectfully,

A handwritten signature in blue ink, appearing to read "William Rose", with a stylized flourish at the end.

William Rose
General Manager

ORDINANCE 320

AN ORDINANCE OF THE TOWN OF IGNACIO AMENDING THE TOWN OF IGNACIO MUNICIPAL CODE, LAND USE CHAPTER 3, SECTION 3-8 DOWNTOWN DESIGN GUIDELINES.

WHEREAS, the Town of Ignacio, Colorado has adopted municipal codes and the municipal codes are being reviewed; and

WHEREAS, The Downtown Design Committee Developed a set of Design Guidelines for the Downtown Business Zone, which were adopted by the Planning Commission; and

WHEREAS, the guidelines and standards need to be updated to promote a more efficient and appropriate growth within the town; and

WHEREAS, residents of the town have expressed a need to revise Section 3-8 Downtown Design Guidelines, to be less restrictive and to simplify the process for applicants;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF IGNACIO, COLORADO THAT THE MUNICIPAL CODE DOWNTOWN DESIGN GUIDELINES ARE AMENDED AS ATTACHED.

APPROVED BY THE BOARD OF TRUSTEES on this 15th day of April, 2015.

TOWN OF IGNACIO, COLORADO

Stella Cox, Mayor

Attest:

Town Clerk

EXHIBIT A
Attached to
ORDINANCE NO 320
THE TOWN OF IGNACIO, COLORADO

Section 3-8 of the Town Municipal Code is amended with revisions and reorganization to the entire section as follows:

3-8 Downtown Design Guidelines¹

Section 1

3-8-1 Introduction.

The organization and association between individual buildings help to define and create the Town's identity, and has direct impacts on the levels of pedestrian and vehicular activity, as well as economic vitality. When architectural features (i.e., entrance location and spacing, window lines, signage and other architectural elements, of commercial buildings are proportionally balanced, the streetscape becomes more inviting for human interaction. Building facades can impact visual continuity, cohesiveness, legibility and aesthetic pride. The design of the facade can encourage shopping, increase a sense of security and safety, and generate pedestrian interaction. In Mixed Use zoned areas, where commercial and residential buildings exist, thoughtful consideration of scale, detailing, and material finishes, is necessary for achieving the desired streetscape setting and character.

3-8-2 Purpose.

The objectives of this section of the Municipal code is to preserve business and property values, encourage new business start-up, and induce a pedestrian friendly Downtown by defining Architectural styles and design standards that promote a harmonious, coordinated streetscape within the Central Business District.

Community residents are proud of their Southwest heritage, and have agreed that the central theme of the buildings along Goddard Avenue shall be designed to follow one or more of the "Southwest Styles" as described in section 3-8-11.

The Ignacio Central Business District exists along Goddard Avenue/ Highway 172, and is considered the commercial core of the town. It harbors a vibrant mix of activities that serve the needs of local residents and also appeals to an increasing visitor population.

The district is planned to be pedestrian-friendly with sidewalks existing from one end of the district to the other. There is ample "on street" and "alley access" parking which supports commercial activity.

This ordinance has been created to provide a base format of design options and standards for new building construction and remodels along Goddard Avenue; it also provides design parameters that will encourage owners to invest and improve their properties in a manner that contributes to the character and function of the district while meeting individual needs.

3-8-3 Applicability.

This ordinance applies to the Central Business District for new and existing structures along Goddard Avenue, from the north town limits to the south town limits and from East Alley to Central Alley, of Ignacio, Colorado. All new construction and remodels within this district shall comply with this ordinance and all associated sections of this code. This ordinance also applies to the maintenance of existing conforming and non-conforming structures and vacant lots abutting Goddard Avenue.

3-8-4 Nonconforming Buildings and Structures

Any building or structure, existing prior to these Guidelines, that lies within the Central Business District and not meeting the standards set forth in this ordinance, shall be considered nonconforming. Proposed additions, alterations, or changes of use shall serve to bring the existing nonconforming structure into or

¹ Ordinance 228, April 13, 2005, Ordinance 251, November 14, 2007, Ordinance 278, January 12, 2010

towards compliance with this ordinance.

Exception: existing occupied and non-occupied residential structures may continue the residential use.

3-8-5 Criteria for Approval.

Applications for construction within the Central Business District may be approved only if the proposed project complies with the standards within this ordinance or receives exceptions under 3-8-21.

3-8-6 Process²

The Town of Ignacio Code Official shall receive all applications for construction within the Town limits. Applications are available online at the Town's web site: www.townofignacio.com, and/or at Town Hall. All applications for construction shall include the following:

1. Name of the property Owner and/or business owner.
2. Owner(s) phone number.
3. Address of the proposed new construction,
4. Legal description of the property to be developed.
5. The Use or Occupancy of the proposed construction.
6. The General Contractor, if known, along with address and phone number.
7. The valuation of the proposed construction.
8. A complete set of Construction drawings of sufficient clarity to indicate the location, nature and extent of the work proposed, and show in detail that it will conform to the provisions of the adopted codes and relevant laws, ordinances, rules and regulations adopted by the Town of Ignacio.
9. Any other data or information requested/required by the building department.

The Code Official will review completed applications and all accompanying drawings for compliance with all applicable codes and regulations.

3-8-7 Action on Applications³

All building permit applications for new construction and remodeling of exterior facades within the Central Business District shall be presented to the Planning Commission by Planning Staff, for review and acceptance. Upon receipt of a completed application including all associated documents, the Code Official will present the proposed project to the Planning Commission at the next regularly scheduled Planning Commission meeting. The Planning Commissioners shall agree on acceptance and/or recommendations for acceptance of the proposed project. The Planning Commissioners shall state by Motion for, acceptance, denial or conditional approval. If the project is denied by the Commissioners:

1. The applicant may resubmit the project, to the Code Official, with suggested changes incorporated into the design. Staff will present the redesigned project at the Planning Commissioners next meeting, or
2. The applicant may apply for a variance and follow the Board of Adjustment process as outlined in section 3-4-6.

If conditional approval is given by the Commissioners, a list of the specific conditions shall be attached to the application and included as an addendum to the building permit.

Upon Planning Commission approval, and when all associated fees have been paid, a building permit will be issued by the Code official and construction may begin.

The approved design will be announced to the Planning Commission and Town Board as part of staff's routine reporting. The final approved design is reported to the Town Board in staff's regular Planning Report to the Board.

Permits are valid for one (1) year from the date of issuance. All work is expected to be completed within one year unless other arrangements have been made. On written request, the Planning Staff can authorize a one-year extension. No building permit shall be issued after an approval has expired.

² (Ord. 278, 1-12-10)

³ (Ord. 278, 1-12-10)

3-8-8 Building Standards applicable to ALL STRUCTURES abutting Goddard Avenue

The following standards are applicable to all new and remodeled structures fronting Goddard Avenue regardless of Architectural Style.

1. All new buildings to be constructed along Goddard Avenue shall be erected on a permanent foundation system as approved by the Planning department.
2. Building massing and proportions shall be sensitive to the human scale. New or remodeled structures shall design areas of building/human interaction, i.e., near ground level on large buildings, along street facades, entryways, etc. with sensitivity to building elements and human proportions.
3. Allowed exterior finish materials for all new and remodeled commercial buildings:
 1. Cementitious Stucco
 2. Synthetic Stucco
 3. Adobe or Adobe brick
 4. Earth Plaster
 5. Stone – real or cultured Drystack, Fieldstone, or River rock.

***note:** Aluminum, vinyl siding, metal panels, mirrored glass, exposed concrete block or Concrete are prohibited exterior finish materials unless an applicant requested variance is approved by the Planning Commission.

4. Building Details

- (a) Window and door space combined shall not exceed forty (40) percent of any publicly viewable elevation,
- (b) Doors on street fronting elevations of buildings and structures are recommended to have divided lights not exceeding thirty (30) inches in any dimension. Snap-in or applied mullions are permitted.
- (c) All new commercial structures shall comply with all applicable requirements of the most current version of the Americans with Disabilities Act (ADA) Title III, where applicable.

3-8-9 Building Scale and Massing

Design consideration of building scale and massing help to establish the unique character and define the setting for the Central Business District. Smaller-scale buildings, or buildings perceived to be of a smaller scale, are more likely to create the atmosphere of a pedestrian friendly streetscape. Human-scaled buildings generally feel more comfortable and can create an experience that enhances the marketability and social interaction necessary for the success of commercial businesses. Buildings, and their associated architectural elements, should convey a sense of human scale and create a reinforcing relationship with the sidewalk, street, and pedestrians.

The height and scale of infill development and alterations to existing structures within the District should relate to and complement existing neighboring structures. New and remodeled structures should provide storefront windows, doors, entries, transoms, awnings, cornice treatments and other architectural features designed to complement existing and surrounding structures.

Buildings that extend greater than fifty (50) feet along the street-side(s) shall utilize appropriate techniques to break-up the plane of the continuous building line. For example, these techniques may include, but are not limited to architectural elements, i.e., windows, doorways, staggered walls, pilasters change in materials, etc.

3-8-10 Setbacks

Newly constructed buildings abutting Goddard Avenue, shall be constructed up to the property line with allowance for minimal setback at intervals appropriate to the scale, proportions, and design of the new structure. Niches or pockets for seating are encouraged for long expansive wall frontage. Refer to section 3-5-7 for setback requirements

3-8-11 Architectural Styles and Building Elements

The following design standards are based on local and regional vernacular architecture applicable to building construction and remodeling along Goddard Avenue and the Central Business District. It is desired that all new construction and exterior remodeling within the Central Business District, incorporate one, or a mix, of the architectural styles and building elements outlined below into the design submitted to the Town Planning Commission for approval:

(1) Name: Territorial Southwest

(A) Characteristics:

1. Appearance of stucco, earth plaster or adobe exterior walls.
2. SQUARE parapets.
3. Framed windows, Victorian style.
4. Brick or decorative coping or parapet trim.
5. Square beam supports, instead of round.

(2) Name: Pueblo

(A) Characteristics:

1. Appearance of stucco, adobe or earth plaster on exterior walls.
2. ROUNDED parapets.
3. Windows and doors inset a minimum of two (2) inches, plaster covers the frame of the windows, located within three (3) feet from the corner of the building, unless within an enclosed porch.
4. Edges and corners shall be rounded.
5. Primary elevations shall be flat, varied by inset portals, projecting portals, projecting vigas or rafter tails, scuppers, flying buttresses and wooden lintels, and/or architraves and cornices.
6. Vertical posts are round.
7. Carved ornamentation.
8. Flat or slightly pitched roofs concealed behind parapets.

(3) Name: Mission Style

(A) Characteristics:

1. Simple, smooth stucco or plaster siding.
2. Broad, overhanging eaves
3. Exposed rafters
4. hipped or gabled tile roof
5. Roof parapets
6. Large square pillars
7. Twisted columns
8. Arched entry and windows
9. Covered walkways or arcades
10. Round or quatrefoil window
11. Restrained decorative elements consisting of tile, iron, and wood

(4) Name: Ignacio

(A) Characteristics:

Adaptations of local existing built architectural elements.

3-8-12 Screening walls, Fences and Landscaping

Screening walls shall be predominantly constructed of the same materials and in the same style as the building. Styles may be approved if they are complementary to the building's style. Chain link and wire fencing is not acceptable for street facing fences.

The height of the wall or fence shall not obscure the building facade on street-side(s). Generally, this would

